IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1523 of 2002

Mr Gopal Bhikha Umrigar ... Petitioner

vs

Maha.Hsg & Area Deve.Autho. & ors .. Respts

Mr Santosh Shetty i/b Mr.M.M.Vashi for Petitioner

Mr Vishal Phal AGP for Respt nos.1 and 2.

Mr Manish S.Diwadkar for Respt no.3

CORAM : D.G. KARNIK, J

DATED : 14th June 2005.

P.C.

1. Heard learned counsel for the parties. By this petition the petitioner challenges the order dated 4th February, 2002 passed by the Chief Officer of the respondent no. 1 Housing Board alloting the new premises in lieu of the old premises i.e. Room no. 2 Jarivala Chawl, D.B.Marg, Mumbai, to the respondent no.3.

2. The petitioner claims that he was a tenant of the

premises bearing room no. 2 at Jarivala chawl, D.B.Marg, Mumbai (hereinafter referred to as the old premises). He had allowed the respondent no. 3 to occupy the old premises. At one stage, the petitioner claimed that he had allowed the respondent no. 3 to occupy the old premises by reason of his being in his employment and at another place he claimed that he allowed the respondent no. 3 to occupy the premises as a friend. The building had become old and dilapidated and therefore the respondent no. 1 Housing Board decided to demolish the old building and reconstruct a new building in accordance with the provisions of the Maharashtra Housing and Area Development Act, 1976 (for short the Act). Accordingly, a notice for vacating the premises was issued to all the tenants in March 1987. The notice was also issued to the respondent no.3 who was in occupation of the old premises. The occupiers vacated the premises and transit accommodation was allotted to all the occupiers including the respondent no.3 in the year 1987. When the new building was ready and new premises were about to be allotted to the respondent no. 3 the petitioner made an application dated 3rd July, 1991 alleging that he was a tenant and it was he and not the respondent no.3 who was entitled to the allotment of the new premises. He further

alleged that the respondent no. 3 was not personally occupying the transit accommodation but had sublet them and therefore the new premises should not be allotted to the respondent no. 3 but should be alotted to him. The respondent no. 3 apprehending that the respondent nos. 1 and 2 may allot new premises to the petitioner filed a suit in the City Civil Court, Bombay bearing Short Cause Suit No. 4056 of 1994 against the respondent no. 1 and the petitioner praying that the new premises should be allotted to him and not to the petitioner. By an order dated 10th March, 2000 the learned Judge of the City Civil Court directed the respondent nos. 1/2 to hold an enquiry and after hearing both the petitioner and the respondent no. 3 decide their claim and then allot the new premises to the person entitled to the allotment. In terms of this order in pursuance of the respondent no. 2 held the enquiry and after hearing the petitioner and the respondent no.3 and after permitting them to adduce the documents and evidence to prove who was a tenant and who was the occupier within the meaning of section 2 (25) of the Act, and after considering the evidence adduced by them, by a reasoned order dated 4th February, 2002 the respondent no. 2 held that the respondent no. 3 was the occupier of the old premises

and acocrdingly ordered that the new premises be allotted to him. That order is impugned in this petition.

3. The case of the respondent no. 3 is that in the year 1965 or thereabout the petitioner had transferred the suit premises to him ; the respondent no. 3 was in possession of the suit premises since 1965 and was paying rent to the landlord. According to the respondent no. 3 though the premises were transferred to him in the year 1965 by the petitioner the rent receipt continued in the name of the petitioner. The petitioner was never in possession of the premises after 1965 and it was the respondent no. 3 who was in possession since 1965 and was paying rent to the landlord. In the year 1981, first notice was issued regarding the intention of the respondent nos.1 and 2 housing board for the redevelopment which was received by the respondent no.3. A second notice under section 77 (b) of the Act was issued on 21st March 1987 and was also received by the respondent no. 3 who was in possession. The petitioner never received any of the notices issued in 1981 and in 1987 as he was not in possession. In pursuance of the said notices possession of the old premises was taken from the

respondent no.3 and the transit accomodation was also allotted to him and not the petitioner. It is therefore the respondent no.3 who was the occupier of the old premises and is entitled to allotment of the new premises.

4. Learned counsel for the petitioner submits that the order passed by the 2nd respondent holding that the respondent no.3 was the occupier and was entitled to the allotment of the new premises is perverse. He submits that case of the respondent no. 3 was inconsistent and respondent no.2 had not considered those inconsistencies at all. He firstly invites my attention to the statement made by the respondent no. 3 in the letter dated 3rd July, 1991 written by him to the respondent no.2. In the said letter the respondent no. 3 has stated: " I purchased the room from Gopal Bhika Umrigar (i.e. the petitioner herein)." However, in the plaint in Suit No. 4056 of 1994 the respondent no. 3 has stated that the petitioner who was a tenant had transferred the old premises to him. He therefore submits that at one place the respondent no. 3 was claiming transfer of ownership and at other place he was claiming transfer of tenancy. I have perused the plaint in Suit No. 4056 of 1994 (Exhibit J) as also

the letter dated 3rd July, 1991 written by the respondent no. 3 on 3rd July, 1991 (Exhibit I) The statement of the respondent no. 3 in the letter he stated that he purchased the room from the petitioner appears to have been loosely made to contend that he purchased the tenancy rights of the petitioner in respect of the suit premises. It would be useful to make a reference to the letter dated 1st March 1993 written by the petitioner himself to the property officer of the development project in which he has stated " I am the owner of the room in the old building ". Thus both the parties loosely referred to the tenancy rights in the old premises as if they were ownership rights. This was either a misconception about the difference between the ownership and the tenancy rights or on account of the fact that possession of the old premises were already taken by the Housing Board in 1987 and new premises were to be allotted on ownership basis. In any event, both the parties at one place describe themselves to be a tenant and at other place as an owner of the old premises. Assuming that there is some inconsistency in the case of the respondent no.3, there is equal inconsistency in the case of the petitioner also.

5. Learned counsel for the petitioner took me to some pieces of evidence which was adduced by the respondent no.3 before the respondent no. 2 for proving that he was in occupation of the old premises. Learned counsel submits that the evidence was insufficient to hold that the respondent no. 3 was in possession of the suit premises continuously from 1965 till 1987. I am unable to agree. The respondent no. 3 had produced before the respondent no. 2 ESIS/Identity card as well as copy of the electoral roll which shows that he was in occupation of the old premises. ESIS Identity card also showed his address to be the old premises. Notice under section 77 (b) of the Act was also served on the respondent no. 3. The petitioner had not produced any evidence to show that he was in possession after the year 1965. In fact it is not even the case of the petitioner that he was in possession of the suit premises. Even according to him he had allowed the respondent no.3 to occupy the suit premises. At one place, he states that he had allowed the respondent no. 3 to occupy the old premises as an employee and at another place he states that he had allowed the respondent no. 3 to occupy the old premises as a friend. Leaving aside those inconsistencies, the fact remains that case of the petitioner all along was that

he was not in possession of the suit premises but the respondent no. 3 was in possession of the suit premises. It was the case of the respondent no.3 that he having taken the possession of the room from the petitiioner from 1965 was in possession and was paying the rent to the landlord. This fact was not denied by the petitioner. The view taken by the respondent no. 2 that the respondent no.3 was the occupier is a correct view and in any event a a possible view. The same cannot be interferred with in the writ jurisdiction in the absence of any perversity. Hence, petition is dismissed. Rule discharged with costs. Request of the learned counsel for the petitioner to continue the interim order granted in the past is rejected.

D.G.KARNIK, J